

# NATIONAL MEDIATION BOARD

## 2000 Annual Performance Report

For the Fiscal Year Ending September 30, 2000





NATIONAL MEDIATION BOARD  
Washington, DC 20572



The President  
Speaker of the House of Representatives  
President *Pro Tempore* of the Senate

March 2001

It is an honor to submit to you the Report on Program Performance for the National Mediation Board (NMB or Board) for Fiscal Year 2000, pursuant to the provisions of Section 4 (b) of the Government Performance and Results Act, 31 U.S.C. 116 (a)-(f). The report covers programs and operations during the year and provides information on NMB performance and progress in achieving the goals set out in the Board's strategic and annual performance plans.

The NMB performed well for the 12 month period ending September 30, 2000. There were several challenging mediation disputes during the period that included some instances of confrontational bargaining and self-help activities which resulted in court injunctions. The number of new mediation and alternative dispute resolution cases increased by seven percent while the number of cases closed exceeded the 1995-1999 five-year average by 21 percent. The NMB successfully met all performance standards for its representation dispute program activities and remained current with its caseload throughout the fiscal year.

The NMB closed more than 8,700 railroad arbitration cases during the year. This was a 55 percent increase over the number of cases closed the previous year. The FY 2000 supplemental funding of NMB Section 3 activity was instrumental in this achievement. Improvements in administration and oversight, training, grievance mediation, and the Board's ongoing encouragement of labor and management efforts to resolve disputes without third-party intervention also contributed to this dramatic increase in closed cases.

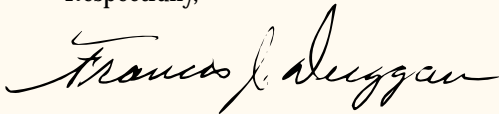
The results found in this report reflect the Revised FY-2000 NMB Performance Plan, which was previously shared with the House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies. The revision consolidated overlapping performance goals and targets and eliminated duplication. Certain goals and targets in the original plan were moved and tracked as management strategies or placed under subordinate departmental work plans. The strategic plan and annual performance plan outcome goals for NMB mediation, representation and arbitration activities appear in their respective sections of this report.

ii

This report and its appendix compare actual and projected performance and identify performance targets not achieved. Performance results are used in the day-to-day operations of the Board and are considered in revising the Board's performance and strategic plans. This report also contains tabular and narrative information, which is reported annually by the NMB and the National Railroad Adjustment Board pursuant to Section 4, Second of the Railway Labor Act.

For FY 2000, Congress authorized \$9,562,000 and 52 employees for the NMB. This appropriation resource level enabled the NMB to meet its statutorily mandated obligations, provide services to its airline and railroad labor, management and public customers, and meet its strategic performance outcome goals. More than 90 percent of NMB staff participated in direct customer contact in providing the services described in this report.

Respectfully,

A handwritten signature in black ink, reading "Francis J. Duggan". The signature is written in a cursive, flowing style with a large, prominent "F" and "D".

Francis J. Duggan  
Chairman

CC: Congressional Committee Addressees

# Mission Statement



The National Mediation Board (NMB), established by the 1934 amendments to the Railway Labor Act (RLA) of 1926, is an independent agency which performs a central role in facilitating harmonious labor-management relations within two of the nation's key transportation sectors—the railroads and airlines. Pursuant to the RLA, NMB programs have provided an integrated dispute resolution process that effectively meets the statutory objective of minimizing work stoppages in the railroad and airline industries by securing voluntary agreement. The NMB's integrated processes are designed to promote three statutory goals:

- The prompt and orderly resolution of disputes arising out of the negotiation of new or revised collective bargaining agreements,
- The effectuation of employee rights of self-organization where a representation dispute exists, and
- The prompt and orderly resolution of disputes over the interpretation or application of existing agreements.

## TABLE OF CONTENTS

<b>i</b>	Letter of Transmittal
<b>iii</b>	Mission Statement
<b>iv</b>	National Mediation Board and its Staff
<b>v</b>	Board Member Registry
<b>1</b>	Organization and Structure
<b>2</b>	Financial Statement
<b>4</b>	Railway Labor Act and NMB Functions
<b>8</b>	Mediation & ADR Performance Results
<b>16</b>	Representation Performance Results
<b>22</b>	Arbitration Performance Results
<b>25</b>	Appendix

## NATIONAL MEDIATION BOARD

Fiscal Year 2000



Member

Francis J. Duggan



Chairman

Ernest W. DuBester



Member

Magdalena G. Jacobsen

Chief of Staff

Stephen E. Crable

Deputy Chief of Staff

Benetta Mansfield

Director, Arbitration

Roland Watkins

Hearing Officers

Mary L. Johnson (Senior)  
 Sean J. Rogers (Senior)  
 Eileen M. Hennessey

Chief Financial Officer/  
 Chief Information Officer

June D.W. King

Director, Public Affairs

James E. Armshaw

Director, Center for  
 Advanced Studies

Ronald M. Etters

Senior Mediators

Lawrence E. Gibbons  
 Patricia Sims  
 John Schrage (ADR)  
 John J. Bavis \*

Mediators

Samuel Cognata  
 Rich Frey  
 Richard Hanusz  
 Denise Hedges  
 Thomas Ingles  
 Zachery Jones

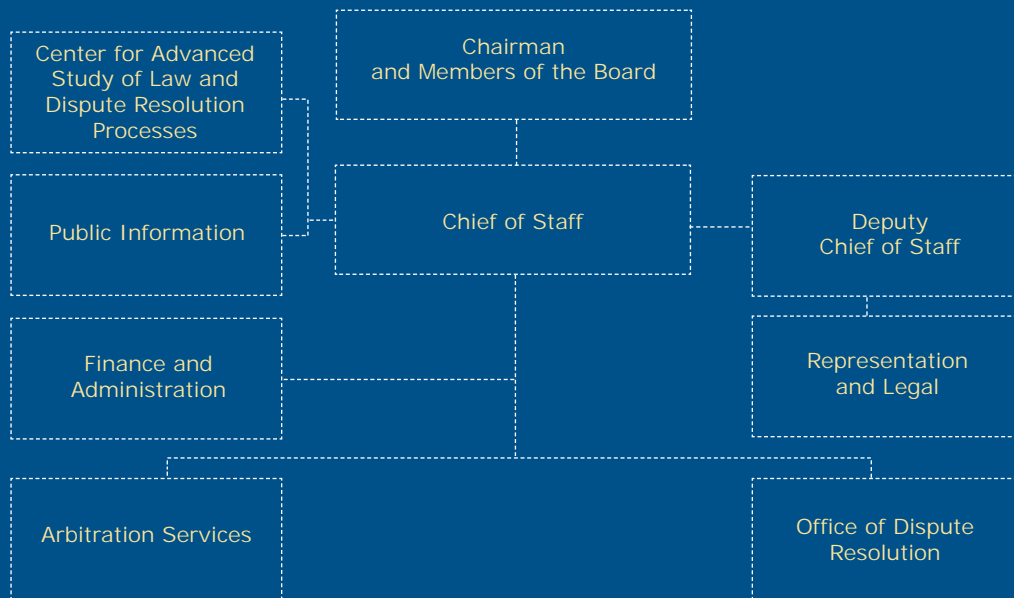
Jack Kane  
 Fred Leif  
 John Livingood  
 Gale Oppenberg  
 Les A. Parmelee  
 Laurette Piculin  
 Linda A. Puchala

\*resigned

## REGISTRY OF BOARD MEMBERS



Name	Entered Office		
Francis J. Duggan	11-22-99	Term Expires	07-01-03
Magdalena G. Jacobsen	12-01-93	Term Expires	07-01-02
Ernest W. DuBester	11-15-93	Term Expires	07-01-01
Kenneth B. Hipp	05-19-95	Resigned	12-31-98
Kimberly A. Madigan	08-20-90	Resigned	11-30-93
Patrick J. Cleary	12-04-89	Resigned	01-31-95
Joshua M. Javits	01-19-88	Resigned	11-14-93
Charles L. Woods	01-09-86	Resigned	01-15-88
Helen M. Witt	11-18-83	Resigned	09-18-88
Walter C. Wallace	10-12-82	Term Expired	07-01-90
Robert J. Brown	08-20-79	Resigned	06-01-82
Robert O. Harris	08-03-77	Resigned	07-31-84
Kay McMurray	10-05-72	Term Expired	07-01-77
Peter C. Benedict	08-09-71	Deceased	04-12-72
David H. Stowe	12-10-70	Retired	07-01-79
George S. Ives	09-19-69	Retired	09-01-81
Howard G. Gamser	03-11-63	Resigned	05-31-69
Robert O. Boyd	12-28-53	Resigned	10-14-62
Leverett Edwards	04-21-50	Resigned	07-31-70
John Thad Scott, Jr.	03-05-48	Resigned	07-31-53
Francis A. O'Neill, Jr.	04-01-47	Resigned	04-30-71
Frank P. Douglass	07-03-44	Resigned	03-01-50
William M. Leiserson	03-01-43	Resigned	05-31-44
Harry H. Schwartz	02-26-43	Term Expired	01-31-47
David J. Lewis	06-03-39	Resigned	02-05-43
George A. Cook	01-07-38	Resigned	08-01-46
Otto S. Beyer	02-11-36	Resigned	02-11-43
John M. Carmody	07-21-34	Resigned	09-30-35
James W. Carmalt	07-21-34	Deceased	12-02-37
William M. Leiserson	07-21-34	Resigned	05-31-39



## Organization and Structure

The National Mediation Board is comprised of three members appointed by the President with the advice and consent of the U.S. Senate. Terms of office are for three years with the exception of members appointed to fill a vacancy of an unexpired term. Terms are staggered so that on July 1 of each year one of the three terms expires. A member may stay in office after the expiration of his or her term until a successor has been appointed and enters office. No more than two members may be of the same political party. The Railway Labor Act requires that the Board annually designate one member to serve as its chair.

The Board is responsible for providing carriers and labor organizations with dispute resolution services in the railroad and airline industries. The Board's rail and air transportation customers include hundreds of airlines and railroads and dozens of labor organizations. These carriers employ more than 900,000 employees. The Board's jurisdiction also extends to hundreds of smaller certificated air carriers, commuters, and air taxis, including ambulance, sightseeing, commercial helicopter and certain airport, air freight and related services and their employees.

# Financial Statement FY 2000

2

In the fiscal year 2000, the Congress appropriated \$9,562,000 for NMB operations.

Expenses and Obligations	2000 Actual
Personnel Compensation	\$ 5,539,733
Personnel Benefits	717,576
Benefits for Former Personnel	(4,601)
Travel and Transportation of Persons	472,167
Transportation of Things	31,979
Rent, Communications, Utilities	950,508
Printing and Reproduction	108,018
Other Services	632,200
Supplies and Materials	91,686
Equipment	13,947
Unvouchered	3,166
Total	8,556,379







NMB mediators apply a variety of dispute resolution techniques including traditional mediation, interest-based problem solving, and facilitation to resolve disputes.

# RAILWAY LABOR ACT

## and NMB Functions

The Railway Labor Act (RLA) provides a comprehensive statutory framework for the resolution of labor-management disputes in the airline and railroad industries. Enacted in 1926 as a collaborative effort of labor and management, the RLA succeeded several previous federal statutes dating back to 1888. The 1926 Act provided for mandatory mediation and voluntary arbitration in contract negotiations, as well as for Presidential Emergency Boards (PEBs) to enhance dispute resolution. Key amendments to the Act in 1934 established the current three-member National Mediation Board and authorized the resolution of employee representation disputes by the NMB. In 1936, the RLA's jurisdiction was expanded to include the airline industry. The Act's most recent substantive amendment in 1981 permitted the creation of specialized Presidential Emergency Boards for disputes at certain commuter railroads.

The RLA has five “general purposes”:

- Avoid interruptions to interstate commerce in the airline and railroad industries;
- Ensure the right of employees to freely determine whether they wish to be represented for collective bargaining purposes;
- Ensure the independence of labor and management for self-organization to carry out the purposes of the Act;
- Provide for the prompt and orderly settlement of collective bargaining disputes; and
- Provide for the prompt and orderly settlement of disputes over the interpretation of existing collective bargaining agreements.

### Mediation and Alternative Dispute Resolution

The RLA requires labor and management to make every reasonable effort to make and maintain collective bargaining agreements. Initially, the parties must give notice to each other of their proposals for new or revised agreements. Direct bargaining between the parties must commence promptly and continue in an effort to resolve or narrow their differences. Should the parties fail to reach agreement during direct negotiations, either party, or the parties jointly, may apply to the Board for mediation.\* Following receipt of an

\*An application for the NMB's mediation services may be obtained from the Board's web site at [www.nmb.gov](http://www.nmb.gov)

application, the NMB will promptly assign a mediator to assist the parties in reaching an agreement. The Board is obligated under the Act to use its “best efforts” to bring about a peaceful resolution of the dispute. NMB mediators apply a variety of dispute resolution techniques, including traditional mediation, interest-based problem solving, and facilitation to resolve the dispute.

If after such efforts the Board determines that mediation will fail to settle the dispute, the NMB advises the parties of that determination and offers arbitration as an alternative approach to resolve the remaining issues. If either party rejects this offer of arbitration, the Board promptly releases the parties from formal mediation. This release triggers a thirty-day cooling off period. During this thirty-day period, the Board will continue to work with the parties to achieve a peaceful solution to the dispute. However, if an agreement has not been reached by the end of the thirty-day period, the parties are free to exercise lawful self-help. Examples of lawful self-help include carrier-imposed working conditions or a strike by the union.

In addition to traditional mediation services, the NMB also provides, as resources and staff permit, Alternative Dispute Resolution services. ADR services include pre-mediation facilitation, training and grievance mediation. The purpose of the Board's ADR program is to assist the parties in learning and applying more constructive, less confrontational methods for resolving their disputes. Another goal is to help the parties resolve more of their own disputes without outside intervention. The Board believes that its ADR services, over time, will reduce and narrow the disputes which the parties bring to mediation.\*

### Interest Arbitration

Interest arbitration is a process to establish the terms of a new or modified collective bargaining

agreement through arbitration, rather than through negotiations. Although the RLA makes interest arbitration an option for resolving disputes, its use is not required by the statute. The NMB offers the parties the opportunity to use interest arbitration when the Board has determined that further mediation efforts will be unsuccessful. In situations where the parties have agreed to use interest arbitration, the arbitrator's award is final and binding with very narrow grounds for judicial review.

### Presidential Emergency Boards

The RLA authorizes the NMB to notify the President when a potential strike threatens “substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service.” Upon receipt of notification, the President may create a Presidential Emergency Board (PEB) to investigate and report on the dispute. While the PEB processes are in progress, the parties are required to maintain the status quo and neither party to the dispute may exercise self-help which could involve a disruption of service. Thirty days after the PEB reports its findings, either party may resort to self-help absent an agreement or congressional action. Special PEB procedures apply to commuter rail disputes.

### Representation

Under the RLA, employees in the airline and railroad industries have the right to select a labor organization or individual to represent them for collective bargaining without “interference, influence or coercion” by the carrier. Employees may also decline representation. The RLA's representation unit is a “craft or class,” which consists of the grouping of employees performing similar types of related duties and functions on the carrier. The selection of employee representatives for collective bargaining is accomplished on a systemwide basis, which includes all employees in the craft or class

\*An application for the NMB's dispute resolution services and other agency forms are available at [www.nmb.gov](http://www.nmb.gov).

anywhere the carrier operates in the United States. Collective bargaining agreements cover 85 percent of railroad employees and 65 percent of scheduled airline employees.

When a labor organization files an application\* with the NMB to represent employees, the Board assigns an investigator. The investigator assigned to the case has the responsibility to determine if the craft or class the organization seeks to represent is system-wide and otherwise valid. The NMB's election procedures require that the application must be supported by a sufficient showing of interest by the employees to warrant continuing the investigation. Where the employees are not represented for collective bargaining purposes, a thirty-five percent showing is required. If the craft or class covered by the application already is represented and a collective bargaining agreement is in effect, the showing of interest requirement is a majority of the craft or class.

Should the applicant meet the showing of interest requirement, the NMB will continue the investigation, usually with a secret ballot election. Only employees found eligible to vote by the NMB are permitted to participate in the election. In order for a representative to be certified, a majority of the eligible voters must cast valid ballots in support of representation. The Board is responsible for ensuring that the requirements for a fair election process have been maintained. If the employees vote to be represented, the Board issues a certification of that result which commences the carrier's statutory duty to bargain with the certified representative.

## Arbitration

The RLA provides for both grievance and interest arbitration. Grievance arbitration, involving the interpretation or application of an existing collective bargaining agreement, is mandatory under the

RLA. The NMB has significant administrative responsibilities for the three grievance-arbitration forums in the railroad industry under the RLA: the National Railroad Adjustment Board (NRAB), Special Boards of Adjustment (SBAs) and Public Law Boards (PLBs). The NRAB and its four divisions have statutory jurisdiction over all rail carriers and all crafts and classes of railroad employees. SBAs are created by mutual agreement of the parties. PLBs enable the establishment of special boards of adjustment on individual railroads upon the written request of either party to a dispute. Grievance arbitration in the airline industry is accomplished at the various system boards of adjustment created jointly by labor and management. The Board furnishes panels of prospective arbitrators\* for the parties' selection in both the airline and railroad industries. The NMB also has substantial financial management responsibilities for railroad arbitration proceedings. Arbitration decisions under the RLA are final and binding with very limited grounds for judicial review.

## NMB—GMU Center

As part of its efforts to build a public and private partnership to advance more effective dispute resolution, the NMB established a Center for Advanced Study of Law and Dispute Resolution Processes. This center was chartered by the George Mason University in July 2000 as a collaborative educational effort among the NMB, GMU's Institute for Conflict Analysis and Resolution and its School of Law. At the outset, the Center is focusing on labor-management dispute resolution issues associated with the airline and railroad industries. The Center also sponsors educational programs and seminars focusing on dispute resolution under the Railway Labor Act and internship programs providing practice-based educational opportunities for GMU students at the NMB.

\*An application for a representation investigation, a request to be placed on NMB's Roster of Arbitrators, and other agency forms are available at [www.nmb.gov](http://www.nmb.gov).





Strategic Plan/Performance Plan Outcome Goal:  
*NMB mediation and ADR assistance will foster the prompt and peaceful resolution of collective bargaining disputes in the airline and railroad industries.*

# MEDIATION AND ADR PERFORMANCE RESULTS

## Overview of Fiscal Year 2000

As measured by new cases docketed and cases closed, the NMB experienced a very productive year. The Board docketed 124 new mediation and alternative dispute resolution (ADR) cases during FY 2000. This was a seven percent increase over the 116 cases docketed during FY 1999. The number of new cases for the year exceeded the five-year average for FY 1995-1999 by 25 percent, 124 cases as compared to 99 cases. Focusing solely on ADR cases, the Board's intake increased to 59 cases, a 31 percent increase over the previous fiscal year. Significantly, the number of new ADR cases, which concentrate on training, facilitation and grievance mediation, nearly equaled the number of traditional mediation cases for the first time since the Board began its ADR initiative during 1997.

Despite the continued growth of new cases, the hard work and skill of the Board's mediators resulted in a reduction of pending cases at year end. During FY 2000, the NMB closed 125 cases, while docketing 124 new cases. The number of cases closed represents a 21 percent increase over the five year average for 1995-1999. By year end, pending cases primarily consisted of cases filed within the last 12 months, a dramatic turnaround from the mid-eighties and early-nineties when it was not uncommon to have cases pending for two to three years.

### MEDIATION AND ADR CASES



Total Cases (Mediation/ADR):

	FY 2000	FY 1999	FY 1995-1999 Five Year Average
Cases Pending at Start	90/74/16	154/127/27	150/NA/NA
Cases Docketed	124/65/59	116/71/45	99/NA/NA
Cases Closed	125/78/47	180/124/56	103/NA/NA
Cases Pending at End	89/61/28	90/74/16	146/NA/NA

## Mediation Standards

The NMB's FY 2000 Annual Performance Plan set five timeliness standards for mediation cases. These standards committed the Board to meet timeliness goals in docketing cases, assigning mediators, making initial contact with the parties, setting first meeting dates and setting subsequent meeting dates. In four of the five areas, docketing, mediator assignment, initial contact and first meeting dates, the NMB met or exceeded its standards.

In the fifth area, subsequent meeting dates, the NMB fell short of its target of holding a second mediation conference with the parties within 40 days of the initial mediation conference. The target was achieved in almost 70 percent of the cases. While this was an improvement over last year's 63 percent and the 1997 baseline of 58 percent, the Board deleted this standard from its 2001 performance plan because it did not add value to the mediation process. The Board replaced the "subsequent meeting" standard with two new targets in the 2001 NMB performance plan. One aims to assist the parties in reaching an agreement within a total of 45 mediation days; the other seeks to assist the parties in reaching an agreement within 365 calendar days of the date of docketing.

## FY 2000 Highlights

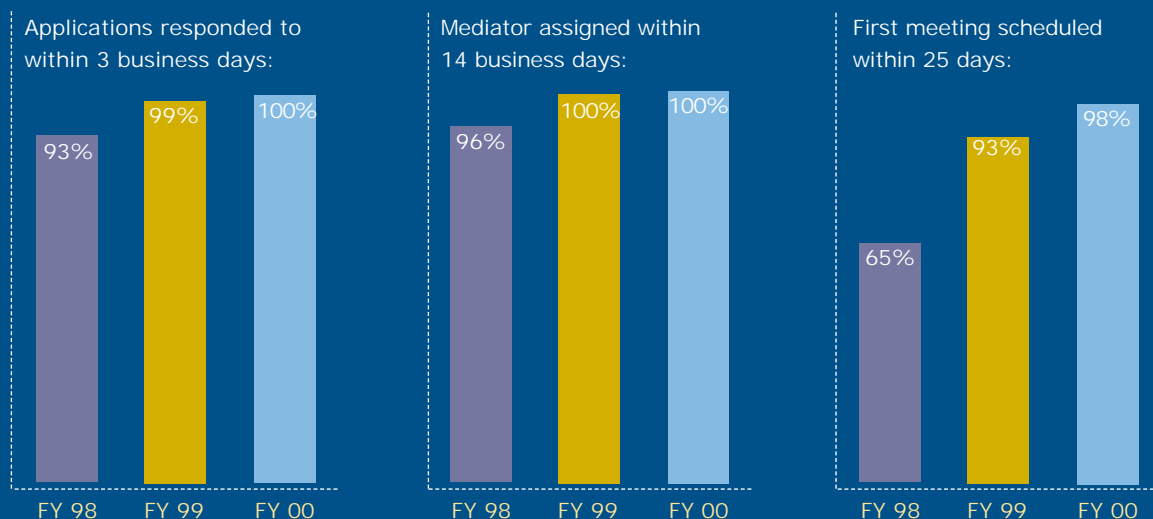
Overall, the airline and railroad industries continued to be profitable during the fiscal year, but a dramatic increase in fuel prices impacted both industries. Service reliability and customer satisfaction became major issues for shippers and travelers, with some calls for legislative action or limited re-regulation. The general environment in the airline industry centered on continued growth and expansion of aircraft fleets, route structures and mergers. Weather problems, air traffic control capacity issues, labor disputes, and unprecedented passenger and flight volume taxed the patience of travelers and impaired the reliability of some air carrier operations. The railroad industry focused on consolidating operations as a result of new or existing merger agreements between and among four of the country's major freight railroads.

During the year, two huge merger announcements made news. United Airlines purchased US Airways. Justice Department approval of the merger remained uncertain by year end. Canadian National acquired the Burlington Northern and Sante Fe (BNSF). The Surface Transportation Board (STB) rejected this merger and imposed an 18-month moratorium on future mergers, pending the STB's issuance of new regulations addressing rail mergers.

**Self-help Activities:** The general profitability levels of the airline and railroad industries continued to lead to aggressive and, in some instances, confrontational bargaining. In some cases, like the contract disputes between Comair and the Air Line Pilots Association (ALPA) and Northwest Airlines and the Aircraft Mechanics Fraternal Association (AMFA - mechanics and related), alleged self-help activity occurred simultaneously with negotiations and resulted in court injunctions. In other disputes, like the one involving United Airlines and its ALPA-represented pilots, the parties publicly debated, but did not litigate, the question of whether service disruptions suffered by United during the summer resulted from weather, air traffic control delays, scheduling or pilot action. Ultimately, with the Board's assistance, United and ALPA reached an industry leading agreement after less than three months of mediation. The Comair-ALPA and Northwest-AMFA disputes remained unresolved at year end, as did the dispute between American Airlines and its flight attendants, represented by the Association of Professional Flight Attendants (APFA).

While there were no strikes during FY 2000, there were several situations that required a 30-day cooling off period to bring the parties to settlement. US Airways and its flight attendants represented by the Association of Flight Attendants (AFA) averted self-help with a settlement at the end of a 30-day countdown. Trans States Airlines and ALPA reached an agreement at the end of a cooling off period, but the pilots initially rejected this tentative agreement. With NMB assistance, the parties returned to the bargaining table and reached a modified agreement, subsequently ratified by the pilot membership. Northwest Airlines and its flight attendants represented by the International Brotherhood of Teamsters (IBT) reached an agreement short of a cooling off period, but only after a long and sometimes tense round of bargaining that included a failed tentative agreement and litigation over alleged illegal job actions by some flight attendants. Other agreements reached during a cooling off period included CC Air/IBT (stock clerks), Polar/ALPA and Midwest Express/ALPA.

#### MEDIATION STANDARDS





**Rejected Tentative Agreements:** Rejected tentative agreements made negotiations and reaching final settlements problematic. While it appears that this phenomenon has leveled off as compared with the previous two years, it still presents a challenge for the airlines, railroads, and their union counterparts. During FY 2000, Northwest, Comair, Trans States and Midway were among the airlines that reached tentative agreements only to see them fail ratification. On the railroad side, New Jersey Transit, Wheeling and Lake Erie, and SEPTA were among the railroads faced with the challenge of rejected tentative agreements.

**Voluntary Settlements:** Despite the publicity associated with a few, high profile cases which may have contributed to some service disruptions, the Board continued to resolve most of its mediation cases through voluntary agreement between the parties, without cooling off periods or strikes. Although not a complete list, the following airline cases settled by voluntary agreement without the need for a proffer of arbitration:

Alaska/International Association of Machinists (IAM-fleet service), Alaska/AMFA (mechanics), America West Airlines/TWU (fleet service), Comair/IAM (mechanics and related),

Continental/Continental Express/IAM (flight attendants); DHL/IBT (dispatchers), Emery Worldwide/ALPA (pilots), Midway Airlines/ALPA (pilots), Northwest Airlines/IBT (flight attendants), Piedmont/ALPA (pilots), and US Airways/CWA (passenger service).

Voluntary agreements in the railroad industry included: Amtrak/UTU (yardmasters, conductors and dining car), Bessemer and Lake Erie Railroad/UTU, IAM (trainmen, machinist), Delaware and Hudson/BLE (engineers), Florida East Coast/UTU, IBEW (train and engine service, foremen), Grand Trunk Western/UTU (police officers), LIRR/TCU (dispatchers, clerical), Norfolk & Western/UTU (Conductors), New Jersey Transit and four of its unions (IBEW, SMWIA, BRS, and BLE); SEPTA/BMWE, UTU (maintenance of way, conductors), Union Pacific/UPUYC (yardmasters) and Wheeling & Lake Erie/UTU, BLE (conductors, engineers).

Although the agreement remained subject to ratification at the end of the fiscal year, the National Carrier Conference Committee (NCCC) and United Transportation Union (UTU) reached an agreement covering most of the Class 1 railroads and approximately 30,000 employees represented



by the UTU. The parties reached this agreement without mediation assistance, but the agreement was a direct product of three years of monthly Wage and Work Rule Panel meetings between NCCC and UTU. These monthly meetings resulted from the last collective bargaining agreement between the NCCC and UTU. The NMB provided both training and facilitation services to the Panel in this endeavor. Other national rail cases in mediation during the year involved the NCCC and the Brotherhood of Maintenance of Way Employees (BMWE) and also the NCCC and the Transportation Communications International Union (TCU - carmen and clerks). These cases remained in mediation at year end.

**ADR Services:** Despite the attention drawn by several highly contentious airline labor disputes during FY 2000, the Board continued to make significant progress in moving a number of parties toward more constructive dialogue through its ADR services—training, facilitation and grievance mediation.

In several airline cases, the parties' commitment to a more constructive relationship and the ADR services provided by the Board resulted in tentative agreements without the need for mediation services. These cases included Midway Airlines/ALPA, Frontier Airlines/FAPA (pilots), and Vanguard Airlines/VAPA (pilots). Vanguard and VAPA used interest-based bargaining (IBB) to reach a first contract in only nine months, a major accomplishment in view of the two to three years typically consumed by negotiations for a first agreement. Similarly, Frontier and FAPA reached an agreement through the IBB process in less than a year.

Other airline parties who availed themselves of the Board's ADR services included American Eagle/ALPA (pilots), Hawaiian Airlines/ALPA (pilots), Hawaiian Airlines/AFA (flight attendants), PSA/ALPA (pilots), ACA/ALPA (pilots), Arrow

Air/ARWPA (pilots), America West/ALPA (pilots), ATA/ALPA (pilots), Sun Country/ALPA (pilots), Continental/IAM (flight attendants), and Frontier/TWU (dispatchers).

While ADR services have not been as widely accepted in the railroad industry, the Board continued to make progress on several fronts, including the Wage and Work Rule Panel established by the UTU/NCCC and presentations at various union and carrier conferences. Another rail success story involved the use of IBB to facilitate a change in work/rest rules covering BNSF employees represented by UTU and BLE.

In addition to ADR services related to Section 6 bargaining, the Board also provided training and grievance mediation services as part of its overall dispute resolution program. The purpose of these services is to enhance the parties' collective bargaining skills, decrease the time needed to resolve "minor" disputes and reduce the number of minor disputes subject to arbitration. Carriers and unions involved in grievance mediation included ASA/ALPA (pilots), Express Air/ALPA (pilots), CCAir/AFA (flight attendants), DHL/ALPA (pilots), Union Pacific Railroad/UTU (conductors) and Union Pacific Railroad/BLE (engineers). Grievance mediation at these carriers resolved several hundred disputes which would have taken months, if not years, to be resolved in the normal course of business.

**Railroad Retirement:** Most of rail labor and management agreed to major reforms in the Railroad Retirement System. The proposed changes would have increased benefits for employees, decreased contribution rates and allowed private investment of some fund assets. Notwithstanding wide support in Congress, Congress did not adopt these proposed changes.

**Regional Airline Industry:** The regional airlines grew at rates exceeding the major airlines. Passengers and revenue reached record levels due, in no small part, to the purchase and delivery of regional jet aircraft. American Airlines reached a tentative agreement with its pilots which would have allowed American Eagle to operate an unlimited number of regional jets, but limited the seating capacity of this equipment to 50 rather than 70 seats. The American pilots ultimately rejected this tentative agreement which also would have forgiven the \$45 million fine imposed on the Allied Pilots Association (APA) by a federal court as a result of the job actions which occurred in February 1999. United Airlines reached an agreement with its pilots which greatly expanded the carrier's ability to rely on regional jets operated by its partners to increase passenger feed.

Regional airlines, which are either owned by or code share with major airlines, rapidly expanded their fleets of regional jets. Atlantic Coast Airlines underwent explosive growth as it added regional jets to its fleet and expanded its feeder service for United Airlines as a United Express carrier and

Delta airlines as a Delta Connection carrier. Continental Express, Atlantic Southeast Airlines and Comair experienced similar growth.

Potential labor issues loomed as questions of merged seniority lists, "ownership" of flying, and new markets became contentious issues between the employees of major airlines and their regional, code-sharing counterparts.

**Mergers and Acquisitions:** Mega consolidations, contemplated as well as consummated, continued to dominate the railroad industry and heavily colored the bargaining agenda. Although the division of Conrail and its acquisition by Norfolk Southern and CSX started smoothly, both railroads quickly experienced many of the same customer service problems which plagued earlier acquisitions and mergers. Shippers, impacted most recently by the Union Pacific/Southern Pacific merger, aggressively called for regulatory action by the Surface Transportation Board (STB).

In this environment, Canadian National (CN), which previously acquired Illinois Central and







merged the operations without significant disruption, announced an agreement to acquire BNSF. Union Pacific and other Class 1 railroads opposed the merger, claiming that it would pressure them into further consolidations which would result in only two, or perhaps three, Class 1 railroads in North America. The STB, in response to CN's request to approve the acquisition, announced an 18-month moratorium on processing any further merger applications. The STB indicated that it would develop regulations during this moratorium which would take into account the effect on the overall industry of any further mergers. CN and BNSF challenged the STB's refusal to act on their merger, but lost the litigation and subsequently terminated their merger agreement.

Proposed changes in the regulatory structure protecting rail employees against the adverse impact of acquisitions and mergers remained unresolved. Following an apparent agreement between most of railroad labor and the Association of American Railroads (AAR) to resolve this issue, disagreements occurred and the overall solution to the problem evaporated.

Notwithstanding this setback, the UTU reached an agreement with the NCCC to improve the protection afforded UTU-represented employees. Other railroad unions continued their quest for improved protection.

The airline industry faced the prospect of dramatic change with the announcement of the proposed merger of United Airlines and US Airways. In anticipation of antitrust problems, this merger, if approved, would result in the creation of DC Air, the country's first minority owned airline. The proposed United/US Airways combination triggered rumors of a Delta/Continental merger and an American/Northwest deal. By the close of the fiscal year, the United/US Airways merger was still pending approval by the Department of Justice, and Congressional interest remained intense, particularly in light of the service problems experienced by United during the summer. The labor unions representing United and US Airways employees began struggling with the contractual and seniority issues which a merger would portend.



Strategic Plan/Performance Plan Outcome Goal:  
*Upon the request of employees of an airline or railroad, the NMB will promptly investigate representation disputes and definitively resolve the employees' representation status for collectively bargaining purposes.*

# REPRESENTATION PERFORMANCE RESULTS

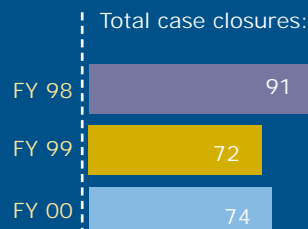
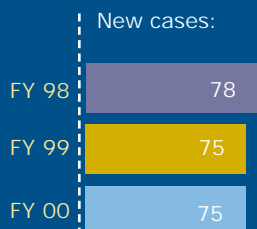
## Overview of Fiscal Year 2000

Most railroad and airline employees are represented for purposes of collective bargaining. Collective bargaining agreements cover 85 percent of railroad employees and 65 percent of scheduled airline employees. The NMB remained current with its representation caseload in FY 2000. During the fiscal year, the NMB closed 99 percent of incoming cases (74 closed; 75 received). This level of case intake and closure is consistent with the Board's five-year FY 1995 average of case activity.

The chart below reflects the NMB's representation caseload for FY 2000, FY 1999, and the five-year average for FY 1995-1999.

### REPRESENTATION CASES

	FY 2000	FY 1999	FY 1995-1999 Five Year Average
Cases Pending at Start	14	11	25
Cases Docketed	75	75	81
Cases Closed	74	72	83
Cases Pending at End	15	14	23



## Representation Standards

The NMB successfully met all of the standards set for representation cases under its FY 2000 Annual Performance Plan. Representation cases are measured by five benchmarks covering the key phases of the Board's investigation: docketing, investigator assignment, showing of interest determination, timely response following ballot count and overall timely resolution. All five standards for timely case processing were fully satisfied during FY 2000.

The Board responded to representation applications within three business days in 99 percent of all cases; assigned an investigator to representation cases within five business days in all cases; determined there was a sufficient showing of interest to authorize an election or dismiss a case within forty-five calendar days in 98 percent of all cases; issued certifications or dismissals within three business days of ballot counts (absent a timely appeal)\* in all cases; and completed all representation investigations within the 90-calendar day target set for all non-appellate cases.

## Significant Developments

Other significant representation developments included revision of the Board's Representation Manual in the areas of docketing and timing for certifications and dismissals; increased use of the NMB website to publicize Representation Manual changes and to access new or revised forms; the assignment of General Counsel Ronald M. Etters to the Center for Advanced Study of Law and Dispute Resolution Processes at George Mason University; and the selection of Benetta Mansfield as Deputy Chief of Staff, responsible for supervision and management of the representation and legal department.

## FY 2000 Highlights

Under the Railway Labor Act (RLA), the selection of employee representatives for collective bargaining is accomplished on a system-wide basis. Due to this

requirement, and the staffing practices in the airline and railroad industries, the Board's representation cases frequently involve numerous operating stations across the nation. In many instances, labor and management raise substantial issues relating to the composition of the electorate, jurisdictional challenges, allegations of election interference and other complex matters which require careful investigations and rulings by the NMB.

Representation disputes involving large numbers of employees generally are more publicly visible. However, all cases require and receive neutral and professional investigations by the Board. The NMB ensures that the employees' choices regarding representation are made without interference, influence or coercion. The case summaries that follow are examples of the varied representation matters which were investigated by the NMB during FY 2000.

**Union Pacific/UTU & BLE:** An inter-union contest continued during FY 2000 at the Union Pacific Railroad (UP) between the UTU and the BLE. These organizations represent more than 13,000 employees at the UP. Following unsuccessful union merger discussions, in May 1999 the UTU reactivated its previously filed representation application before the NMB. The UTU asserted that the UP's Train and Engine Service Employees should be represented in a single craft or class, while the BLE sought to retain the current division of the employees into two units. The NMB held an evidentiary hearing with numerous witnesses in July 1999. On December 30, 1999, the Board referred resolution of the matter to a three-member panel of prominent labor relations professionals. On March 1, 2000, the panel ruled that the conditions in this case did not support an order for the Board to impose a single craft or class. On the basis of this determination the Board dismissed UTU's application. On March 2, 2000, UTU filed a motion for reconsideration of the Board's dismissing the UTU's application for the craft or

\*During FY 2000, the Board changed its procedure. Dismissals and certifications take place the next business day following the count in all cases.

class of Train and Engine Service Employees. At year end, the motion remained pending.

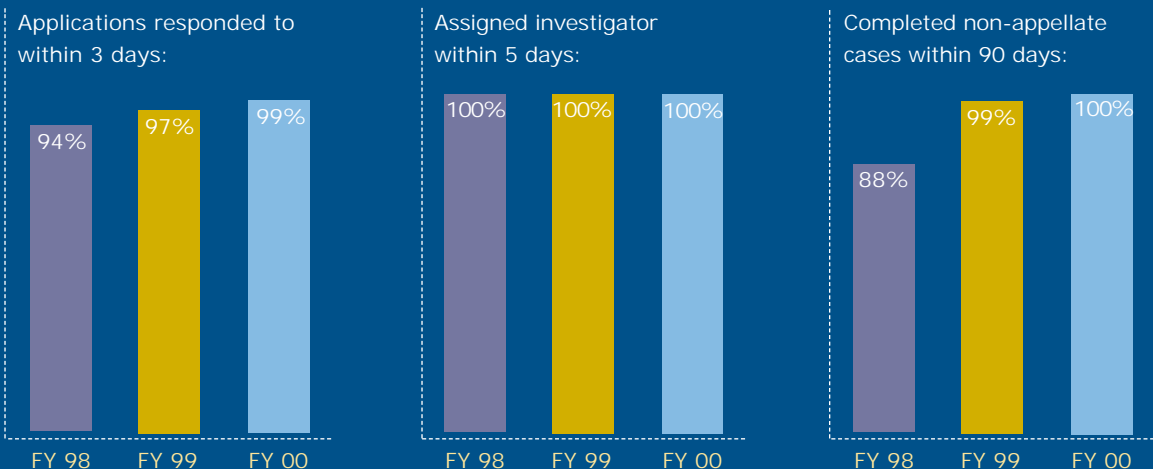
**ERA Aviation/IBEW:** At ERA, an Alaska carrier, the Board ordered a rerun election for the Flight Attendants after finding that the carrier tainted laboratory conditions. Specifically, the Board found that ERA's Vice President of Flight Operations received a ballot from an eligible voter, which is a *per se* violation. In addition, the Carrier's General Counsel held one-on-one or small group meetings with the employees where she provided misinformation about the Railway Labor Act and the Board's voting procedures. The Board ordered a re-run election using a "Laker" ballot, where the employees' choice is "Yes" or "No" to representation and the majority of votes cast determines the outcome. The applicant organization, International Brotherhood of Electrical Workers, did not receive a sufficient number of "Yes" votes to be certified in the re-run election. Therefore, the application was dismissed.

#### **Worldwide Flight Services/TWU:**

The Transport Workers Union (TWU) filed a representation application for the "Ramp Services Employees" at Worldwide Flight Services, Inc. (WFS). For many years, TWU represented the Ramp Services Employees at AMR Services,

Inc. (AMR). In early 1999, AMR was sold to Castle Harlan, Inc. which changed the entity's name to WFS. WFS recognized TWU and assumed the existing collective bargaining agreement thereby becoming the successor to AMR. The investigation established that there was a collective bargaining relationship between TWU and WFS, and that TWU was the only organization involved. TWU and WFS agreed to certification without an election, and pursuant to Board's Representation Manual at §§ 10.1 and 10.4, the Board determined to proceed with the investigation which might result in certification without an election. The Board instructed WFS to post a "Notice to Employees" informing the craft or class of the investigation to determine whether a certification without election should be issued based on a showing of majority support for the TWU. WFS provided signed dues authorization cards and employee signature samples indicating majority support for TWU as the representative for Fleet Service Employees and Mechanics and Related Employees. TWU also provided evidence of signed dues authorization cards. The Board found a majority of both crafts or classes had chosen TWU as the representative. Therefore, the Board issued two certifications without unnecessary delay or disruption to the employees or WFS.

#### REPRESENTATION STANDARDS





**DalFort Aerospace/IBT:** After the Board conducted elections for the Stock Clerks and the Mechanics and Related Employees, DalFort challenged the Board's continued jurisdiction over its operations. DalFort argued that factual changes rendered the company no longer subject to the RLA. After an extensive investigation, the Board found that the RLA's jurisdiction continued over the company, which provides aircraft repairs to common carriers by air. The Board applied its two-part test which examines whether the nature of the work performed is traditional airline work, and whether common carriers either own or exercise control over the company. Aircraft repair work is traditionally performed by airline employees. DalFort was not owned by an airline. Thus, the Board examined the record to determine whether the airlines DalFort contracted with exercised control over DalFort employees. The Board found that the airlines exercised substantial control, recommending employee assignments, reassignments, hiring employees, and directing DalFort's employees to redo work.

**Offshore Logistics/Air Logistics of Alaska/IUOE/OPEIU:** This was a complicated series of decisions involving helicopter carriers which service Gulf oil rigs and the Alaskan oil pipeline. Initially, the Office and Professional Employees International Union (OPEIU) filed an application to represent the Mechanics and Related Employees at Offshore Logistics. Offshore Logistics challenged the application asserting that it was no longer a carrier under the Act. After an investigation, the Board ruled that Offshore Logistics was no longer a carrier, but its subsidiaries, Air Logistics LLC and Air Logistics of Alaska were carriers. The Board, therefore, administratively amended OPEIU's application into two applications, one for the Mechanics and Related Employees at Air Logistics LLC, and the other for the Mechanics and Related Employees at Air Logistics of Alaska. Shortly after this decision, OPEIU withdrew the application at Air Logistics of Alaska. The Board issued a decision on withdrawal and applied its one-year bar on applications for the same employees at the same Carrier. In the other case, Air Logistics,





LLC, the OPEIU did not receive a sufficient number of votes to be certified. Therefore, the application was dismissed.

Approximately two weeks later, the Board received an application from the International Union of Operating Engineers (IUOE) seeking to represent the Mechanics and Related Employees at Air Logistics of Alaska. The IUOE argued that extraordinary circumstances existed in this case for waiver of the one-year bar. After reviewing the matter, the Board issued a decision finding extraordinary circumstances and waiving the one-year bar. The Board therefore, docketed a new application for Air Logistics of Alaska with IUOE as the applicant and OPEIU as the Intervener. The Board mailed out the ballots. Shortly before the scheduled count, the OPEIU asked the Board to impound the ballots and delay the count pending compliance proceedings against the IUOE for violating the AFL-CIO constitution. The Board temporarily impounded the ballots pending position statements from the

parties. The OPEIU withdrew the request and the count of ballots proceeded. The OPEIU was successful and a certification issued.

**Emery Worldwide Airlines/IBT:** This case was referred from the National Labor Relations Board (NLRB) for an advisory opinion as to whether certain work performed by employees of Emery Worldwide Airlines (EWA) fell within the Railway Labor Act jurisdiction. In 1997, EWA entered into a contract to sort and deliver two-day priority mail for the United States Postal Service. In order to do this, the contract required EWA to establish ten Priority Mail Processing Centers (PMPCs) on the East Coast. The International Brotherhood of Teamsters filed petitions with the NLRB to represent the truck drivers, operators and sorters at two PMPCs. Because of the complexity of the case, the NMB conducted an evidentiary hearing. At the close of the year, the case remained pending before the Board.



Strategic Plan/Performance Plan Outcome Goal:  
*The NMB will promote the prompt and orderly resolution  
of grievance disputes.*



# ARBITRATION PERFORMANCE RESULTS

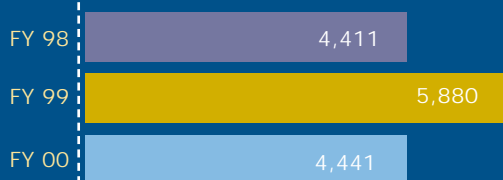
## Overview of Fiscal Year 2000

During FY 2000, the NMB closed 8,751 cases. This was a 55 percent increase over FY 1999 and an 83 percent increase over the 1995-99 five-year average. Several considerations drove this remarkable increase in cases closed: \$500,000 of supplemental funding for Section 3 activities; improved administrative oversight by the NMB of Section 3 activities; the availability of training and grievance mediation services through the Board's ADR program; and regular encouragement of the parties' efforts to resolve disputes themselves, without the intervention of an arbitrator.

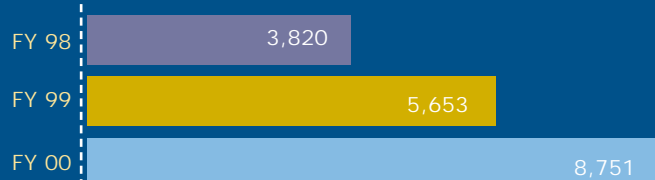
In addition to the extraordinary number of cases closed during the year, the parties added only 4,441 cases in FY 2000 compared to 5,880 in FY 1999. These two factors resulted in a 38 percent decline in the number of cases pending at year end. The NMB believes that these improvements show that its problem solving initiative is having a marked effect on improving the timeliness of resolving minor disputes in the rail industry and reducing the number of disputes which require Government paid arbitration.

### ARBITRATION CASES

#### New cases:

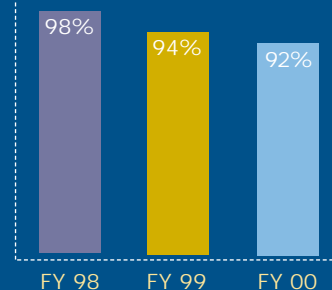


#### Total case closures:



Arbitration Standard: In FY 2000, the Arbitration and Financial Departments met the agency's arbitration performance goal by reimbursing arbitrators within 10 calendar days, in over 92 percent of all cases.

#### Payments to arbitrators meeting the standard: \*



\*The standard was changed from 14 calendar days to 10 work days starting FY 2000.

	FY 2000	FY 1999 Adjusted	FY 1995-1999 Five Year Average
Cases Pending at Start	11,237	11,010	10,294
Cases Docketed	4,441	5,880	5,006
Cases Closed	8,751	5,653	4,785
Cases Pending at End	6,927	11,237	10,467

### Arbitration Standards

The Arbitration and Financial Management Departments met the Board's FY 2000 performance plan goal for reimbursing arbitrators within 10 business days from its receipt of an invoice. Ninety-two percent of all payments were sent within 10 business days. This is a new target which covers all payments. The old target was to send 90 percent of the payments within 14 calendar days.

### FY 2000 Highlights

At the start of this fiscal year, the Board began a systematic review of its Section 3 caseload and administrative procedures. The Board worked with the Section 3 Committee, which consists of representatives of the rail freight and commuter carriers along with the major rail labor organizations, to find ways to reduce the time it takes to resolve arbitration cases and to increase the number of cases resolved. The Section 3 Committee and the Board created a subcommittee to cooperatively explore procedural changes. Several new and refined initiatives emerged from NMB's work with the Section 3 groups.

**Annual Case Audit:** In November of 1999, the Board began an intensive audit of all cases pending before Public Law Boards (PLB) and Special Boards of Adjustment (SBA). The NMB provided the National Railway Labor Conference (NRLC), Section 3 Committee members, commuter railroads, regional railroads and all labor organizations

representing railroad employees with lists of pending cases on PLBs and SBAs and directed the parties to report any discrepancies between its records and NMB records. During the first five months of the fiscal year, the audit resulted in the closure of approximately 2,627 cases.

### Arbitrator Compensation and Administrative Process Improvements:

As a result of the supplemental funding provided by the FY 2000 appropriations bill, the Board increased the arbitrator's daily rate of pay from \$220 to \$300. By increasing the rate, railroad arbitration work became more competitively priced. While the \$300 daily rate still falls short of the typical rate paid outside the rail sector, the Board believes that this pay increase contributed to the significant increase in case closures.

Along with the rate increase, the Board adjusted other administrative procedures intended to increase the number of cases resolved and enhance the speed of resolution. For example, the NMB began rigorously enforcing the six-month rule which requires arbitrators to issue decisions within six months from the date of the hearing. Arbitrators are notified in advance of cases which may run afoul of the rule and contacted on a regular basis to establish a schedule for deciding their outstanding cases. This process produced significant results, including one situation in which the arbitrator agreed to resolve 51 cases in one month.

### **Expedited Arbitration Pilot Projects:**

In an effort to encourage pilot projects which speed the resolution of cases and reduce costs, the Board approved a pilot PLB project agreement between Norfolk Southern and the Brotherhood of Locomotive Engineers (BLE). Under the terms of this agreement, the selected arbitrator agrees to hear a docket of 21 cases within 60 days and to render awards within thirty days from the date of the hearing. The agreement limits parties' briefs to five pages and the arbitrator's award to one page per case. The parties selected an experienced railroad arbitrator to serve as the neutral on this pilot PLB. The Board agreed to compensate the neutral \$50 for each case heard and \$150 for each decision rendered, payable upon receipt of the awards. The project is still underway and an assessment will be made when the project is completed. A similar project last year was very successful.

**Grievance Mediation:** The NMB actively promoted grievance mediation as a method of reducing the time and cost of resolving grievance disputes. The NMB conducted grievance mediation training with several labor organizations and carriers. One such project involved a team of mediators who conducted grievance mediation training at UTU regional meetings. The feedback from these sessions was positive and led to grievance mediation projects on several carriers. Additionally, the NMB held grievance mediation training for joint carrier/union audiences at Burlington Northern Santa Fe, Union Pacific Railroad and the Soo Line Railroad.

One notable new project involved an agreement between the major freight railroads and the UTU, the largest user of Section 3 services, to establish a pilot project that makes grievance mediation a routine option for each new PLB created by the UTU. The project commenced in January 2000. As a result of time and attention devoted by UTU and NCCC to national bargaining, this initiative remains in the formative stages.

### **New Case Management System and Agency Web Site:**

As part of an overall plan to improve its management information systems, the NMB procured and installed a new arbitration case management system. This new system will allow the Board to accurately monitor the Section 3 case-load and identify downward trends which require corrective action. Over time, the system will enable the Board to help the parties prioritize case issues, evaluate existing boards, screen new cases filed, and identify grievance issues by region, location and the parties involved.

The Board continued its program of aggressively using the NMB web site as a source for forms and documents needed by arbitrators and the parties. This use of the Internet allows arbitrators, the parties and the public to obtain information and forms instantaneously and reduces the staff time required to respond to questions and requests.

